IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2794 to 2800 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
MAHMAD IQBAL RASULKHAN & 1 - Defendant(s)

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Appearance :
Mr.S.S.Shah, learned GOVERNMENT PLEADER for Appellant(s) : 1 - 2.
MR AJ PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 22/08/2006

COMMON **ORAL JUDGMENT**

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Mr.S.S.Shah, learned Government Pleader for the appellants, states at the Bar that the interest of the appellants and that of respondent No.2 is common and is not in conflict at all. In view of the statement made at the Bar, this Court is of the opinion that it is not necessary for the appellants to effect service of notice of admission of these appeals upon the respondent No.2. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants i.e. (1) Special Land Acquisition Officer, Narmada Yojna, Unit No.5, Vadodara and (2) State of Gujarat have challenged the legality of common judgment and award dated May 26,2004 rendered by the Incharge Joint District Judge and Addl. Sessions Judge, Bharuch at Rajpipla in Land

Acquisition Reference Case Nos.963/02 to Land Acquisition Reference Case No.969/02 by which the claimants are awarded total compensation at the rate of Rs.15/- per sq.mt. for their acquired lands.

3. The Executive Engineer, Narmada Yojna, Nehre Vibhag No.2/4. Kevadia Colony, made a proposal to the State Government to acquire agricultural lands of village Pan Talavadi, Taluka Nandod, District Narmada for the public purpose of Narmada Yojna. On consideration of the said proposal, the State Government was satisfied that lands of village Pan Talavadi were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on July 14,1994. The land owners were thereafter served with notices as required by law. They opposed to the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as required by Section 5A(2) of the Act. On scrutiny of the said report, the State Government was satisfied that the lands of village Pan Talavadi,

specified in Notification published under Section 4(1) of the Act, were needed for public purpose of Narmada Yojna. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on May 4, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.20/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated September 29,1995 offered compensation to the claimants at the rate of Rs.1.60 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Bharuch, where they were numbered as noticed earlier.

4. On behalf of the claimants witness Mahmad Iqbal Rasulkhan was examined at Exh.16. Over and above stating that the lands acquired were highly fertile, it was mentioned by the said witness that each claimant was earning net profit of Rs.25,000/- per Acre per year from the sale of agricultural produces. What was maintained by the said witness in his testimony was that village Sanjaroli was only 3 Kms. away from village Pan Talavadi and the boundaries of village Khadgada and Vaviyala were adjacent to village Pan Talavadi. It was also mentioned by the said witness that lands of village Sanjaroli were acquired for construction of Kevadia road and the claimants were awarded compensation at the rate of Rs.11/- per sq.mt. vide judgment dated January 23,2004 rendered in Land Acquisition Reference Case Nos.188/93 to 191/03 and, therefore,the claimants should be awarded compensation on the basis of the said previous award. The witness produced previous award of Reference Court relating to lands of village Sanjaroli at Exh.15. It was also mentioned by the said witness that considerable development had taken place near the acquired lands and, therefore, the

claimants were entitled to enhanced compensation at the rate of Rs.20/- per sq.mt. In cross-examination by the learned Government Pleader for the State,the suggestion made on behalf of the State Government that no evidence was produced by him to establish that his village and village Sanjaroli were adjacent to each other was accepted by the witness. It was also admitted by him that the claimants had not maintained any books of accounts to indicate the earning realised from the sale of agricultural produces. However, the suggestion made by the learned Government Pleader that adequate compensation was offered by the Special Land Acquisition Officer was emphatically denied by him. In cross-examination by the learned advocate for the acquiring body, it was mentioned by the witness that no documentary evidence was available to establish that different crops were being raised on the lands acquired, as mentioned by him in his examination-in-chief.

5. It may be mentioned that no witness was examined on behalf of the appellants or the acquiring body nor any documentary evidence was produced by any of them

for consideration of the Court. On appreciation of evidence adduced by the claimants, the learned Judge of the Reference Court deduced that previous award of the Reference Court relating to lands of village Sanjaroli was relevant and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. It was also noticed by the learned Judge that previous award of the Reference Court relating to lands of village Sanjaroli had attained finality inasmuch as no appeal was filed before the higher forum challenging the said award. In view of the assertion made by the witness for the claimants that lands previously acquired from village Sanjaroli and the lands acquired in the instant case were similar, the learned Judge of the Reference Court has placed reliance on the said previous award and awarded total compensation to the claimants at the rate of Rs.15/- per sq.mt. by the impugned judgment and award, giving rise to the above numbered appeals.

6. This Court has heard Mr.S.S.Shah, learned Government Pleader for the appellants and

Mr.A.J.Patel, learned counsel for the claimant/claimants in each appeal at length and in great detail. This Court has also considered the documentary as well as oral evidence produced by the learned counsel for the parties for perusal of the Court. From the record and more particularly from the testimony of witness Mahmad Iqbal Rasulkhan examined by the claimant at Exh.16 it is clear that no documentary evidence could be produced by the claimants to establish that each claimant was earning net profit of Rs.25,000/- per Acre per year from the sale of agricultural produces. The claimants did not claim any compensation on yield basis nor any sale deeds were produced by the claimants in support of their claim for enhanced compensation. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court rendered in Land Acquisition Reference Case Nos.188/93 to 191/93 relating to the lands of village Sanjaroli, produced at Exh.15. Exh.15, which is previous award of the Reference Court, makes it very clear that lands of village Sanjaroli were acquired for the public purpose of

construction of Ankleshwar-Sanjaroli road pursuant to publication of notification issued under Section 4 of the Act on October 4,1990. Therein the Land Acquisition Officer by his award dated February 24,1992 offered compensation to the claimants at the rate of Rs.180 per Are i.e. Rs.1.80 Ps. per Sq.Mt. though the claimants had claimed compensation at the rate of Rs.2000/- per Are i.e. Rs.20/- per sq.mt. Feeling aggrieved by the offer of compensation made by the Special Land Acquisition Officer, references were sought and the Reference Court by judgment and award dated January 23,2004 awarded compensation to the claimants at the rate of Rs.11/- per sq.mt. The assertions made by Mr.Mahmad Iqbal Rasulkhan that village Sanjaroli was situated quite near his village Pan Talavadi and that the boundaries of village Khadgada and Vaviyala were adjacent to his village could not be demonstrated to be untrue. The record indicates that the lands, which were subject matter of previous award, were proximate to the lands acquired in the instant case. No negative fact could be brought on record either by the appellants or by the acquiring body to persuade the Reference Court to

hold that previous award of the Reference Court in respect of lands of village Sanjaroli was irrelevant or that suitable adjustment was required to be made while determining the market value of the lands acquired in the instant case, on the basis of the said previous award. In Thakarsibhai Devjibhai and others v. Executive Engineer, Gujarat and another, 2001(2) GLH 583 (Supreme Court), distance between two classes of land was noticed by the Court. However, it has been held that distance between 2 classes of land by itself can not derogate the claim of the claimant in absence of any material showing quality and potentiality to be different. What is emphasised in the said decision by the Supreme Court is that distance between two lands of 5 Kms. is not relevant factor but township situated at almost same distance for both the lands is relevant. In the said case, the Reference Court had relied upon the award of a nearby land. The High Court also relied upon it but reduced the compensation on the ground that area of acquired land was large and that land under award was 5 Kms. away. While reversing the decision of this Court, the Supreme Court has held that the High Court

had committed error in reducing the compensation on this ground. Further from the evidence on record it is quite clear that though the lands in the instant case were acquired from village Pan Talavadi, the village is situated quite near to other villages i.e. village Sanjaroli, village Khadgada and village Vaviyala. Therefore, they can be consolidated into one single unit with little to choose between one stretch of land and another. In fact the evidence of the witness for the claimants would indicate that the entire area was in a stage of development and the different villages were capable of being developed in the same manner as the lands comprised in village Sanjaroli where the market value of the land acquired was fixed at Rs.11/- per sq.mt. It may be mentioned that in First Appeal No.1763/06 this Court was concerned with the question whether proper compensation was determined by the Reference Court with reference to agricultural lands acquired from village Khadgada, Taluka Nandod, District Bharuch. While deciding the said question, the Court had relied upon the previous award of the Reference Court relating to the lands of village Sanjaroli, which

makes it very clear that all the villages are situated near each other and previous award of Reference Court relating to the lands of village Sanjaroli would be a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case also.

7. On over all view of the matter, this Court is satisfied that the Reference Court has taken pragmatic approach while fixing the market value of the lands acquired in the instant case. It is well settled that previous award of the Reference Court, which has attained finality, relating to the lands of adjoining village, can be taken into consideration while determining the market value of the lands acquired subsequently from another village. On re-appreciation of evidence, this Court finds that correct finding of facts have been arrived at to which correct principles of law have been applied by the Reference Court. It may be mentioned that in the case of village Sanjaroli, Notification under Section 4(1) of the Act was published on October 4,1990, whereas Notification under Section 4(1) of the Act

for acquiring the lands in the instant case was published on July 14,1994 and, therefore, the claimants would be entitled to reasonable rise in price of land at the rate of 10% per year, which is granted by the Reference Court. There is no manner of doubt that just amount of compensation payable to the claimants is determined by the Reference Court and no ground is made out by the learned Government Pleader to interfere with the same in the instant appeals. The result is that the appeals, which lack merit, deserve to be dismissed.

8. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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